

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELSEVIER, INC., MOSBY, INC.
AND ELSEVIER BV,

Plaintiffs,

-against-

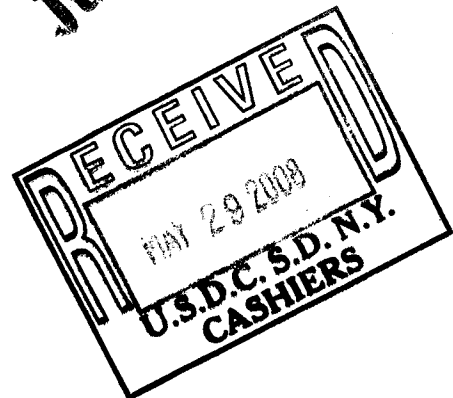
ARJUN SAGAR AND NISHANT SAGAR
BOTH D/B/A HALF PRICE D/B/A
SUPERPRICE D/B/A BOOKSDISCOUNT
D/B/A RELIABLE BOOK SERVICE
D/B/A BOOKZORRO D/B/A
PREMIUM BOOKS D/B/A PATMARKET
D/B/A IBOOKSTORE D/B/A
GLOBALRETAILOUTLET AND
JOHN DOES NOS. 1-5,

Defendants.
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08 CIV 4960

08 Civ.

Judge Berman



COMPLAINT

Plaintiffs Elsevier, Inc., Mosby, Inc. and Elsevier BV
(collectively "Elsevier") by their undersigned attorneys, for
their complaint against defendants Arjun Sagar and Nishant Sagar
both d/b/a Half Price d/b/a Superprice d/b/a Booksdiscount d/b/a
Reliable Book Service d/b/a BookZorro d/b/a Premium Books d/b/a
Patmarket d/b/a ibookstore d/b/a Globalretailoutlet, and John
Doe Nos. 1 through 5, aver:

Nature of the Action

1. Elsevier is bringing this action to enforce its
copyrights and trademarks against defendants' unlawful sale in

the United States of non-United States versions of Elsevier's educational books.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the first two claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because they arise under the Copyright Act, 17 U.S.C. § 101 et seq., or the Lanham Act, 15 U.S.C. § 1051 et seq. This Court has subject matter jurisdiction over the third claim in this action pursuant to 28 U.S.C. § 1367 because it is so related to the claims within the original jurisdiction of this Court that they form part of the same case or controversy within the meaning of Article III of the United States Constitution.

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. § 1391.

Parties

4. Elsevier, Inc. is a corporation organized and existing under the laws of the State of New York with its principal place of business at 360 Park Avenue South, New York, New York.

5. Mosby, Inc. is a corporation organized and existing under the laws of the State of Missouri with its principal place of business at 11830 Westline Industrial Drive, St. Louis, Missouri.

6. Elsevier BV is a corporation organized and existing under the laws of The Netherlands with its principal place of business at Radarweg 29, 1043 NX Amsterdam, The Netherlands.

7. Upon information and belief, defendant Arjun Sagar is a natural person residing at 9760 Lakemoore CV, Villa Rica, Georgia.

8. Upon information and belief, defendant Nishant Sagar is a natural person residing at 9760 Lakemoore CV, Villa Rica, Georgia.

9. Upon information and belief, defendants John Doe Nos. 1-5 are associates of Arjun Sagar and Nishant Sagar, whose identities are presently unknown to Elsevier.

The Business of Elsevier

10. Elsevier publishes a variety of works, including educational books.

11. As a standard practice, Elsevier requires its authors to assign the copyright to it or grant it the exclusive rights of reproduction and distribution in the United States. This practice enables Elsevier to maximize dissemination of each work.

12. Elsevier invests significant monies to publish its copyrighted works. Elsevier, for example, makes substantial investments in royalties, content creation, licensing,

copyediting, proofreading, typesetting, layout, printing, binding, distribution, and promotion.

13. Elsevier earns a substantial portion of its revenue from the publication of its copyrighted works and would suffer serious financial injury if its copyrights were not enforced. A substantial decline in its income could cause Elsevier to cease publishing one or more deserving books or journals. This would adversely impact the creation of new works, scholarly endeavor, and scientific progress.

14. Elsevier's educational books authorized for sale in the United States are of the highest quality (the "United States Editions"). These books are generally printed with strong, hard-cover bindings with glossy protective coatings and, in some cases, contain extra features such as sewn ribbon bookmarks. Elsevier frequently offers academic supplements, such as CD-ROMs, computer passwords that provide purchasers with access to academic websites corresponding to the textbooks, and study guides with the United States Editions.

15. Elsevier generally creates different versions of its educational books that are intended for sale in specific geographic markets outside of the United States (the "Foreign Editions"). The Foreign Editions materially differ from the United States Editions. The Foreign Editions have thinner paper and different bindings, different cover and jacket designs,

fewer internal ink colors, if any, lower quality photographs and graphics, and generally lower prices than the United States Editions. Also, the Foreign Editions often lack academic supplements, such as CD-ROMs, website passwords, or study guides. The Foreign Editions are generally marked to indicate their lower cost by a legend indicating, in substance, that the title is a "Low Price Edition" and/or authorized for sale only in a particular country or geographic region. The Foreign Editions are uniformly manufactured outside of the United States.

Elsevier's Copyrights and Trademarks

16. Elsevier, Inc. routinely registers its copyrights in its works created in the United States, including those identified on Schedule A (the "Elsevier, Inc. Copyrights").

17. Mosby, Inc. routinely registers its copyrights in its works created in the United States, including those identified on Schedule B (the "Mosby, Inc. Copyrights").

18. Elsevier BV routinely creates its works outside of the United States, including those identified on Schedule C (the "Elsevier BV Copyrights").

19. Elsevier also owns, or exclusively licenses through its parent or affiliate companies, trademarks that it uses to differentiate its products from those of its competitors.

20. These trademarks include "Elsevier" and "Academic Press AP," (the "Elsevier Trademarks"). The United States Registrations for the Elsevier Trademarks are identified on Schedule D.

The Infringing Acts of Defendants

21. Defendants have without permission purchased Foreign Editions of Elsevier's books manufactured outside of the United States and resold them to purchasers in the United States through the Internet at the websites including, but not limited to, Abebooks.com, Valorebooks.com, Bookbyte.com, Albooks.com, and eCampus.com.

FIRST CLAIM FOR RELIEF

(Copyright Infringement - 17 U.S.C. § 501)

22. Elsevier repeats the averments contained in paragraphs 1 through 21 as if set forth in full.

23. Elsevier, Inc. has received United States Certificates of Copyright Registration for the Elsevier, Inc. Copyrights.

24. Mosby, Inc. has received United States Certificates of Copyright Registration for the Mosby, Inc. Copyrights.

25. Elsevier BV has created the Elsevier BV Copyrights outside the United States.

26. The Elsevier, Inc. Copyrights, the Mosby, Inc. Copyrights and the Elsevier BV Copyrights (collectively, the "Elsevier Copyrights") are valid and enforceable.

27. Defendants have infringed the Elsevier Copyrights in violation of 17 U.S.C. § 501.

28. Defendants' acts have irreparably damaged and, unless enjoined, will continue to irreparably damage Elsevier. Elsevier has no adequate remedy at law for these wrongs and injuries. Elsevier is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants and their agents, servants, employees, and attorneys and all persons acting in concert with them, from infringing the Elsevier Copyrights.

29. Defendants have willfully infringed the Elsevier Copyrights.

30. Elsevier is entitled to recover all damages sustained as a result of defendants' unlawful conduct including (1) defendants' profits, or (2) Elsevier's damages, or alternatively (3) statutory damages.

SECOND CLAIM FOR RELIEF

(Trademark Infringement - 15 U.S.C. § 1114(a))

31. Elsevier repeats the averments contained in paragraphs 1 through 30 above as if set forth in full.

32. Elsevier, or its licensors, have obtained United States Trademark Registrations for the Elsevier Trademarks.

33. The Elsevier Trademarks are valid and enforceable.

34. Defendants have infringed the Elsevier Trademarks in violation of 15 U.S.C. § 1114(a) by using them on and/or in connection with the works that they have sold.

35. Defendants' acts complained of herein have irreparably damaged Elsevier and may continue to do so. The damage to Elsevier includes harm to its good will and reputation in the marketplace for which money cannot compensate. Elsevier has no adequate remedy at law for these wrongs. Elsevier is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants, their agents, servants, employees, and attorneys and all persons acting in concert with them from using the Elsevier Trademarks or any colorable imitation of them.

36. Defendants have willfully infringed the Elsevier Trademarks.

37. Elsevier is entitled to recover (1) defendants' profits from the infringing books, (2) Elsevier's damages, (3) the costs of the suit, and (4) reasonable attorneys' fees.

THIRD CLAIM FOR RELIEF

(Common Law Unfair Competition Under State Law)

38. Elsevier repeats the averments contained in paragraphs 1 through 37 above as if set forth in full.

39. Defendants' acts complained of herein have damaged and may continue to damage Elsevier irreparably. The damage to Elsevier includes harm to its goodwill and reputation in the marketplace for which money cannot compensate. Elsevier has no adequate remedy at law for these wrongs and injuries. Elsevier is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants, their agents, servants, employees, and attorneys and all persons acting in concert with them from using the Elsevier Trademarks or any colorable imitation of them, to restitution of defendants' ill-gotten gains, and to punitive damages in an amount to be determined by the trier of fact in this action.

WHEREFORE, Elsevier demands judgment:

A. Preliminarily and permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing the Elsevier Copyrights in violation of 17 U.S.C. § 501;

B. Awarding Elsevier its damages or defendants' profits, or alternatively, at Elsevier's election, statutory

damages, as a result of defendants' willful infringement of the Elsevier Copyrights;

C. Preliminarily and permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing the Elsevier Trademarks in violation of 15 U.S.C. § 1114(a);

D. Awarding Elsevier its damages and/or defendants' profits from their willful infringement of the Elsevier Trademarks pursuant to 15 U.S.C. § 1117(a);

E. Directing that defendants engage in such additional activities, including, but not limited to, recalls of products and corrective advertising, as may be necessary and appropriate to mitigate the damage defendants have caused;

F. Awarding Elsevier its costs in this action, including its reasonable attorneys' fees pursuant 17 U.S.C. § 505 and 15 U.S.C. § 1117;

G. Awarding Elsevier punitive damages in an amount to be determined by the trier of fact in this action; and

H. Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York
May 29, 2008

DUNNEGAN LLC

By William Dunnegan
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Nikitas E. Nicolakis (NN1325)
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Elsevier BV
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Schedule A
"Elsevier, Inc. Copyrights"

Title (Date of Registration) (Registration #)

1. Dental Instruments A Pocket Guide, (December 13, 2002)
(TX0005643641).
2. Mathematical Methods for Physicists, (November 17, 2000)
(TX0005300179).
3. Introduction to Multimedia Systems, (March 20, 2002)
(TX0005501719).
4. A Mathematical Introduction to Logic, (January 16, 2001)
(TX0005284593).
5. Electronic Materials and Devices, (July 12, 2001)
(TX0005407360).
6. Applications of Nonlinear Fiber Optics (February 20,
2001) (TX0005349744).
7. Mining the Web: Discovering Knowledge from Hypertext
Data, (November 26, 2003) (TX0005856242).

Schedule B
"Mosby, Inc. Copyrights"

<u>Title</u>	<u>(Date of Registration)</u>	<u>(Registration #)</u>
1. Dental Materials: Properties and Manipulation,	(May 1, 2000)	(TX0005187096).
2. Pocket Guide to Radiography,	(February 24, 2000)	(TX0005162415).
3. The Cardiac Catheterization Handbook,	March 25, 2003)	(TX0005724202).
4. Mosby's Dental Dictionary,	(August 18, 1998)	(TX0004851822).
5. Medical Genetics,	(August 22, 2003)	(TX0005804713).

Schedule C
"Elsevier BV Copyrights"

<u>Title</u>	<u>Author</u>	<u>(Publisher)</u>
1. Applying Uml: Advanced Application,	Pooley, Rob; Wilcox, Pauline	(Science & Technology).
2. Cost Control - A Strategic Guide,	Doyle	(Science & Technology).
3. Storytelling In Organizations: Why Storytelling Is Transforming 21st Century Organizations and Management,	Prusak, Laurence	(Science & Technology).
4. Network Processor Design: Issues and Practices,	Crowley	(Science & Technology).
5. Joe Celko's SQL Programming Style,	Celko, Joe	(Science & Technology).
6. Learning to Think Strategically : Connecting the Dots,	Julia Sloan	(Science & Technology).
7. What Business Really Wants From IT: A Collaborative Guide For Business Directors And CIOs,	White, Terry	(Science & Technology).
8. Engineering Ethics: An Industrial Perspective,	Baura, Gail Dawn	(Science & Technology).
9. Rings, Fields and Groups: An Introduction to Abstract Algebra,	Allenby, R. B. J. T.	(Science & Technology).
10. Programmable Logic Controllers: An Introduction,	Bolton	(Science & Technology).

Schedule D
"Elsevier Trademarks"

<u>U.S. Trademark</u>	<u>Registration Number</u>	<u>Class</u>
1. ELSEVIER	0749444	16, 38
2. ACADEMIC PRESS AP	1196196	16, 38